18 **S.B. CIVIL WRIT PETITION NO.6847/2007.**

Jagdish Chandra
Vs.
The Divisional Commissioner, Bikaner & Anr.

Date of Order :: 22nd October 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. V.K. Sharma, for the petitioner.

Heard learned counsel and perused the material produced on record.

The petitioner, then working as Patwari at Patwar Mandal 4 KSN, Tehsil Anupgarh was put under suspension by the order dated 30.12.2002 (Annex.2) in contemplation of criminal case against him. The said suspension order was challenged by the petitioner before this Court in CWP No.2354/2005; and while noticing the contentions on the part of the petitioner that an FIR was lodged against him on 16.12.2002 and the sanction for prosecution was also granted but even after a lapse of 2 years and 7 months' period, the challan had not been filed and the petitioner was under suspension for long, and further noticing that the respondents had not filed any reply to the writ petition despite service, by the order dated 26.07.2005 (Annex.4) this Court stayed the suspension order dated 30.12.2002. It appears from the material placed on record that in pursuance of the interim order passed by this Court, the petitioner was reinstated in

service on 09.08.2005. It further appears that on 13.02.2007, the said CWP No.2354/2005 came to be dismissed by this Court for the order of suspension being an appealable one and the petitioner having efficacious alternative remedy (Annex.6). The petitioner has challenged the said order dated 13.02.2007 before Division Bench in SAW No.230/2007 that has been admitted on 28.03.2007 (Annex.7). However, the petitioner was again put under suspension by the order dated 07.07.2007 (Annex.8).

It further appears that in the meantime, challan came to be filed against the petitioner; and the Sessions Judge, Prevention of Corruption Act Cases, Bikaner in Case No.20/2005 proceeded to frame charges under Section 7 of the Prevention of Corruption Act and Sections 392, 342 and 323 IPC against the petitioner on 07.08.2006. The petitioner has challenged the said order dated 07.08.2006 by way of a revision petition before this Court, being S.B. Criminal Revision Petition No.871/2006. This Court after noticing the contentions on the part of the petitioner and prima facie finding that the matter requires consideration, has issued notices for final disposal on 07.12.2006 and has stayed further proceedings before the learned Sessions Judge, Prevention of Corruption Act Case, Bikaner in Case No.20/2005. This Court, though directed by the said order dated 07.12.2006

(Annex.5) that the matter would be heard and disposed of in the second week of January 2007, it is informed by the learned counsel for the petitioner that the said S.B. Criminal Revision Petition No.871/2006 is yet to be heard.

On the other hand, the petitioner filed an appeal against the order of suspension before the Divisional Commissioner, Bikaner; and approached this Court by way of writ petition, being S.B. Civil Writ Petition No.4798/2007, with the submissions that the appellate authority was not taking up the appeal for consideration. After considering the matter in the said writ petition No.4798/2007 and observing that since the petitioner was availing alternative remedy and making only the prayer for consideration of his appeal in accordance with law, this Court considered it appropriate to dispose of the writ petition on 10.08.2007 (Annex.11) with the directions to the Divisional Commissioner to decide the appeal of the petitioner and it was also observed that if the appeal has not been registered, the petitioner may submit the appeal within a period of ten days from the day and then the same may be decided by the Divisional Commissioner, Bikaner within a period of two months.

Thereafter, the learned Divisional Commissioner has proceeded to decide the appeal filed by the petitioner by his impugned order dated 05.10.2007 (Annex.12) and has

rejected the same finding no ground to revoke the suspension order. Hence this writ petition.

Learned counsel for the petitioner has vehemently argued that the learned Divisional Commissioner has wrongly referred to Rule 54 of the Rules of 1958 where the reference was to Rule 54 of the Rajasthan Services Rules, 1951 only. Learned counsel has strongly relied upon the Government Decision on the said Rule to the effect that in cases of delay exceeding five years due to criminal proceeding pending against the delinquent suspended employee in a court of law, such suspension order may be withdrawn. Learned counsel submitted that the said condition squarely applies to the petitioner and the other condition that if any delinquent government employee has continued under suspension for a period exceeding two years and he has not been prosecuted in a court of law, the orders placing such employee under suspension be immediately withdrawn without prejudice to the decision to be taken in the departmental enquiry, also applies to the case of the petitioner and, therefore, the order putting the petitioner under suspension ought to have been revoked. Learned counsel submitted that the criminal case foisted upon the petitioner remains stayed after this Court found that no corruption case was made out. Learned counsel contended that in the circumstances of the case, the impugned order

deserves to be set aside and the suspension order deserves to be revoked.

Having heard learned counsel for the petitioner and having examined the material placed on record, this Court is clearly of opinion that the present writ petition remains bereft of substance and does not merit admission.

A comprehension of the facts aforesaid makes it clear that the proceedings in the criminal case before the Sessions Judge, Prevention of Corruption Act Cases, Bikaner are pending for the petitioner having questioned the framing of charge by way of the criminal revision petition that is pending consideration before this Court; and further proceedings in the said criminal case have been stayed. Thus, the progress of criminal case against the petitioner is arrested for the stay order passed by this Court in the said revision petition at the instance of the petitioner; and, in this fact situation, this Court is clearly of opinion that so far the suspension order, subject matter of this writ petition, is concerned, such stay of further proceedings in criminal case cannot enure to the benefit of the petitioner.

Learned counsel has strongly relied upon the following part of a Government decision under Rule 54 of the Rajasthan Service Rules:-

> "(1) In exceptional cases if any delinquent Govt. employee has continued under suspension for a period exceeding two years and he has not been prosecuted in a Court of Law the orders placing such employee under suspension be immediately withdrawn without prejudices to the decision to be taken in the Departmental Enquiry case. In case where a delay exceeding five years due to Criminal Proceeding pending against the delinquent suspended employee in a Court of Law, such suspension orders may also be withdrawn and he may ask to perform his duties at the same station on which was fixed by the Disciplinary Authority on the day he was placed under suspension....."

The proposition aforesaid, by its very nature, cannot be applied to every case in the manner that whenever the prosecution is pending for more than five years, the suspended employee ought to be reinstated by revocation of the suspension order; and the said decision of the Government cannot be said to be laying down a requirement of mandatory nature that the suspension oder is to be revoked with mere count of days and months. The learned Divisional Commissioner has considered the entire matter in meticulous details; and there appears no reason to interfere with the order impugned in extra-ordinary writ jurisdiction of this Court for a mere mention by the appellate authority of year 1958 in relation to the Rajasthan Service Rules. The learned Divisional Commissioner has observed and found thus:

> "उपरोक्त विवेचन के आधार पर जिला कलेक्टर श्रीगंगानगर द्वारा जारी निलम्बन आदेश दिनांक 7-7-2007 बिल्कुल सही है । प्रार्थी का यह कथन की

राजस्थान सेवा नियम 1958 के नियम 54 (1) के तहत दो वर्ष से अधिक निलम्बित कार्मिक के विरूद्ध सक्षम न्यायालय में चालान पेश नहीं किया जाता तो उसे बहाल कर दिया जावे हम सही नहीं मानते । हमने इस संबंध में राजस्थान सेवा नियम 1958 के नियम 54(1) का बारीकी से अध्ययन किया । हम प्रार्थी/अपीलार्थी के इस कथन से बिल्कुल सहमत नहीं है कि उक्त नियमों के नियम 54(1) में इस तरह का कोई प्रावधान हो कि दो वर्ष से ज्यादा निलम्बित कार्मिक के विरूद्ध सक्षम न्यायालय में चालान पेश नहीं किया गया हो तो उसे आवश्यक रूप से बहाल कर दिया जावे । इस तरह का कोई प्रावधान नियम 54(1) में नहीं है । अपीलार्थी श्री जगदीश चन्द्र शर्मा ने यह कहकर की माननीय उच्च न्यायालय द्वारा उसके विरूद्ध विचाराधीन क्रिमिनल केस को स्थगित कर दिया है अत: उसे बहाल कर दिया जावे स्वीकार योग्य नहीं है क्योंकि पहले तो यह क्रिमिनल केस न होकर भ्रष्टाचार निरोधक ब्यूरो के अन्तर्गत दायर केस है और यह केस माननीय सेशन न्यायालय (एसीडी) बीकानेर में अभी भी विचाराधीन है । इस प्रकरण में माननीय उच्च न्यायालय द्वारा क्रिमिनल केस संख्या 871/06 में चार्ज को स्थगित किया है यह तथ्य तो स्वीकार्य है लेकिन माननीय उच्च न्यायालय ने कहीं भी किसी आदेश से इस प्रकरण को समाप्त करने का कोई आदेश नहीं दिया है और यदि आज की स्थिति देखें तो जिला कलेक्टर श्रीगंगानगर द्वारा जारी अभियोजन स्वीकृति दिनांक 19-1-2005 के आधार पर कार्मिक के विरूद्ध माननीय सेशन न्यायालय (एसीडी) बीकानेर में चालान भी किया जा चुका है तो ऐसी स्थिति में कार्मिक के पक्ष में कोई भी केस नहीं बनता है कि उसे निलम्बन से बहाल किये जाने पर विचार किया जा सके ।"

Having regard to the facts and circumstances of the case and the findings aforesaid, no case is made out for interference in extra-ordinary writ jurisdiction of this Court.

The writ petition fails and is, therefore, rejected.

(DINESH MAHESHWARI), J.

Mohan/